

APPEAL NO. 033065
FILED JANUARY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 12, 2003, with the record closing on October 27, 2003. The hearing officer determined that respondent 1's (claimant) compensable left foot injury of _____, extends beyond a contusion and swelling and now requires surgery; that the claimant's compensable left foot injury does not extend to include claimant's back; and that the claimant has had disability from January 10 through October 12, 2003.

The appellant (carrier 1) appeals, contending that the claimant suffered from a congenital left foot condition and that the claimant did not sustain a new injury, by either aggravation or in its own right, and that without a compensable injury the claimant cannot have disability. Respondent's 2 (carrier 2) responds, urging affirmance. The file does not contain a response from the claimant. The hearing officer's determination that the compensable injury of _____, does not extend to include the claimant's back has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable left foot injury on (previous injury), when he kicked some pallets at work. Carrier 2 had coverage for this injury. The claimant was diagnosed as having plantar hyperkeratosis and hammer digit syndrome. The claimant had two surgical procedures to his foot (on September 19, 1997, and December 4, 1998) with varying success. The claimant continued to have problems with his left foot but nonetheless returned to work some time in 2000 and performed his duties as a forklift operator/order puller. The claimant sustained a second injury to his left foot on _____, when he dropped a pallet on his foot. Carrier 1 has the coverage for this incident and accepted liability for a contusion and swelling. Exactly what the claimant's problem is and whether additional surgery is needed is in dispute. The claimant's current treating doctor believes the claimant "needs a fourth metatarsal head resection" and "hammertoe Deformity correction" which "will require osseous procedures." Carrier 1's peer review doctor and a required medical examination doctor dispute that opinion. Carrier 1 emphasizes that the pallet hit the top of the claimant's left foot but not the toes and that the work incident of _____, "neither caused nor enhanced Claimant's congenital toe problems that were aggravated by his (previous injury), injury and subsequent surgeries." The hearing officer noted that the claimant had returned to work, working regular hours plus some overtime in 2000, after his 1996 injury.

Questions involving an extent of injury and disability generally present questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of insurance carrier 1 is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. ROBERT SIDDONS
11612 RM 2244, BUILDING 1
AUSTIN, TEXAS 78738.**

The true corporate name of insurance carrier 2 is **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

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Thomas A. Knapp
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge